

# City of Sealy, Texas

## Tax Abatement Policy



Adopted: May 23, 2017

## TAX ABATEMENT GUIDELINES SUMMARY

<b>TERMS</b>	Each project is reviewed on a case-by-case basis. The amount of the abatement will be determined based on the merits of the project, including, but not limited to, total capital investment value, the number of permanent and temporary jobs created, the costs and benefits for the City, and the project's impact on Sealy's economy.
<b>FACILITIES THAT QUALIFY</b>	Corporate Headquarters Facility Manufacturing Facility Research Facility Agriculture Facility Regional Distribution Facility Regional Service Facility Regional Entertainment/Tourism Facility Retail Facility, or Other Basic Industry Facility
<b>AUTHORIZED INVESTMENTS</b>	New Facilities Expansions Modernizations
<b>PROPERTY ABATED</b>	Site improvements including buildings and permanent structures, fixed machinery and equipment and personal property.
<b>ECONOMIC CRITERIA</b>	<b>New business:</b> Minimum of five-million dollars (\$5,000,000.00) increase in appraised value and the creation of ten (10) full-time jobs.  <b>Expansions:</b> Minimum of two-million dollars (\$2,000,000.00) increase in appraised value and the creation of five (5) full-time jobs; and prevent the loss of payroll or retain, increase, or create payroll on a permanent basis in the City of Sealy.
<b>SPECIAL CIRCUMSTANCES</b>	The city reserves the right to grant a tax abatement for a lower percentage or term indicated in Section 3 (i).

**CITY OF SEALY, TEXAS  
TAX ABATEMENT POLICY**

**SECTION 1: GENERAL PURPOSE AND OBJECTIVES**

The City of Sealy is committed both to the promotion of high quality development within the City and to improving the quality of life for its citizens. In order to help meet these goals, the City will, on a case-by-case basis, give consideration to providing tax abatement within designated reinvestment zones as stimulation for economic development in the City.

The City of Sealy will consider tax abatement for qualified business and property owners in accordance with the procedures and criteria outlined in this document and the provisions of Chapter 312 of the Texas Tax Code. Nothing herein shall imply or suggest that the City is under any obligation to provide any incentive to any applicant. All applications shall be considered on a case-by-case basis.

All applications for tax abatement must be for commercial and/or industrial improvements. Tax abatement is available for both new facilities and for the expansion and modernization of existing facilities. No residential developments will be considered for tax abatement. Tax abatement will not be ordinarily considered for projects that would be developed without such incentives unless it is demonstrated that higher development standards or other community development goals will be achieved through the use of abatement. The project shall either add to the diversity of the City's industrial or commercial base and/or has the potential to attract other business development.

## SECTION 2: DEFINITIONS

- (a) **Abatement** means the full or partial exemption from ad valorem taxes of certain new improvements of real and/or personal property in a reinvestment zone designated for economic development purposes.
- (b) **Agreement** means a contractual agreement between the City of Sealy and a property owner and/or lessee for the purpose of tax abatement.
- (c) **Agriculture facility** means buildings, structures and major earth structure improvements, including fixed machinery and equipment, the primary purpose of which is processing, refining, packaging, and distributing food and/or fiber products in commercially marketable quantities.
- (d) **Base Year Value** means the assessed value of eligible property on January 1 preceding the execution of the Agreement plus the agreed upon value of eligible property improvements made after January 1 but before the execution of the Agreement.
- (e) **Corporate Headquarters Facility** means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning or other headquarters related functions are handled either on a national, regional or division basis.
- (f) **Deferred Maintenance** means improvements necessary for continued operations, which do not improve productivity or alter the process technology.
- (g) **Economic life** means the number of years a property improvement is expected to be in service at a facility. Provided, however, that in no circumstance shall the number of years exceed the depreciation allowance specified in the United States Internal Revenue Code.
- (h) **Effective Date of Abatement** means the first (1<sup>st</sup>) day of January immediately following the date the Agreement is executed by the City of Sealy and the applicant.
- (i) **Eligible Jurisdiction** means the City of Sealy, Austin County, emergency services district and any school district or college district which levies ad valorem taxes upon, and provides services to, property located within the proposed or existing reinvestment zone.
- (j) **Expansion** means the addition of buildings, structures, fixed machinery, equipment, and/or personal property for the purpose of increasing production capacity or services.
- (k) **Facility** means property improvements completed or in the process of construction which together comprise an integral whole.
- (l) **Housing** means new housing designed to accommodate shelter and living quarters for one or a few families in separate units, including new single-or multi-family housing projects or apartments, but excluding hotels and motels.
- (m) **Manufacturing Facility** means buildings, structures, fixed machinery, equipment and personal property, the primary purpose of which is or will be the manufacture of tangible

goods or materials or the processing of such goods or materials by physical or chemical change.

- (n) **Modernization** means the upgrading of existing facilities, which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation; modernization may result from the construction, alteration, or installation of buildings, structures, fixed machinery, equipment and personal property. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (o) **New Facility** means a property, previously undeveloped that is placed into service by means other than or in conjunction with expansion or modernization.
- (p) **New Machinery and Equipment** means tangible machinery, equipment, or personal property that is securely placed or fastened and stationary within a building or structure or permanently resides in the City of Sealy.
- (q) **Other Basic Industry Facility** means buildings and structures including fixed machinery, equipment, and personal property not elsewhere described, used or to be used for the production of products or services which primarily serve a market outside the City of Sealy and result in the creation of new permanent jobs and bring new wealth in to the City.
- (r) **Real Property** means the land on which a facility is placed.
- (s) **Reinvestment Zone** is a specific parcel of property designated by the City within which tax abatement can be granted, as defined by Chapter 312 of the Texas Tax Code.
- (t) **Regional Distribution Facility** means buildings and structures including fixed machinery, equipment, and personal property used or to be used primarily to receive, store, service or distribute goods or materials owned by the facility, from which a majority of revenues generated by the activity at the facility are derived from outside the City of Sealy.
- (u) **Regional Entertainment/Tourism Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide entertainment and/or tourism related services, from which a majority of revenues generated by activity at the facility are derived from outside the City of Sealy.
- (v) **Regional Service Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used to provide a service, from which a majority of revenues generated by activity at the facility are derived from outside the City of Sealy.
- (w) **Research Facility** means buildings and structures, including fixed machinery, equipment, and personal property used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials or to improve or develop the production processes thereto.
- (x) **Retail Facility** means space provided for the conducting and management of business, and the storing and selling of goods directly to consumers.

### SECTION 3: GUIDELINES AND CRITERIA

#### Minimum Standards for Tax Abatement

- (a) The project shall not have any negative environmental impacts on the community (e.g., significant pollution or hazardous waste).
- (b) Companies must make every effort to use local resources (services, employees, suppliers, etc.)
- (c) The project should be expected to increase or create payroll on a permanent basis or prevent the loss or retention of payroll in the city.
- (d) **New Facilities:** The project will have an increased appraised ad valorem tax value of at least \$5,000,000.00, excluding land, upon completion of the anticipated improvements based upon the Austin County Appraisal Districts assessment of the eligible property, and create a minimum of ten (10) full-time jobs.
- (e) **Expansion/Modernization:** The project must prevent the loss of payroll or retain, increase or create payroll on a permanent basis in the City of Sealy and have an increased appraised ad valorem tax value of at least \$2,000,000.00, excluding land, upon completion of the anticipated expansion or modernization based upon the Austin County Appraisal Districts assessment of the eligible property, and create a minimum of five (5) full-time jobs.
- (f) Tax abatement may only be granted for the additional tax value resulting from any of the following:
  - (1) construction of a new facility of any type herein defined;
  - (2) expansion of existing facilities of any type as herein defined; or
  - (3) modernization of existing facilities of any type as herein defined.
- (g) The project will not solely and primarily have the effect of transferring employment from one part of the city to another.
- (h) The development must conform to the City's code of ordinances.
- (i) The cost of city services required for the development should not exceed the amount of taxes generated if abatement is provided.
- (j) Maximum Available Abatements Per Year\*\*

#### **New Facilities:**

Taxable Investment (millions)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
5.0 to 9.99	100	90	80	70	60	50	40
10.0 to 19.99	100	100	90	80	70	60	50
20.0 or more	100	100	100	90	80	70	60

\*\*The City of Sealy reserves the right to grant abatements less than the maximum percentages stated and up to the state maximum of 100% for a period not to exceed 10 years.\*\*

**Expansion/Modernization:**

Taxable Investment (millions)	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
2.0 to 4.99	90	80	70	60	50	40	30
5.0 to 9.99	100	90	80	70	60	50	40
10.0 to 19.99	100	95	85	75	65	55	45
20.0 or more	100	100	90	80	70	60	50

\*\* The City of Sealy reserves the right to grant abatements less than the maximum percentages stated and up to the state maximum of 100% for a period not to exceed 10 years.\*\*

## SECTION 4: ABATEMENT AUTHORIZED

**(a) Authorized Tax Abatement Categories:** A facility may be eligible for tax abatement if it is a:

Corporate Headquarters Facility  
Manufacturing Facility  
Research Facility  
Agriculture Facility  
Regional Distribution Facility  
Regional Service Facility  
Regional Entertainment/Tourism Facility  
Retail Facility, or  
Other Basic Industry Facility

**(b) Creation of New Value:** Abatement may only be granted for the additional value of eligible property improvements made subsequent to and in an abatement agreement between the City of Sealy and the property owner and/or lessee, subject to such limitations as the City Council may require.

**(c) Eligible Property:** Abatement may be extended to the value of buildings, structures, fixed machinery, equipment, personal property, and related fixed improvements necessary to the operation and administration of the facility.

**(d) Ineligible Property:** The following types of property shall generally be fully taxable and ineligible for abatement: land; inventories; supplies; tools; furnishings; and other forms of moveable personal property; vehicles; vessels; aircraft; housing; deferred maintenance investments; property owned or used by the State of Texas or its political subdivision or by any organization owned, operated or directed by a political subdivision of the State of Texas, or any property exempted by local, state, or federal law; and property owned or leased by a member of city council or a member of the planning commission of the City.

**(e) Leased Facilities:** If a leased facility is granted abatement, the agreement shall be executed with the lessor and the lessee.

**(f) Value of Term of Abatement:** Abatement shall be granted effective with the January 1 valuation date immediately following the date of the execution of the agreement. The value and term of abatement will be determined based on the merits of the project, including, but not limited to, total taxable investment value and added jobs, if applicable, as determined by the referenced tables in Section 3 (i). However, each application will be considered on a case-by-case basis and the City of Sealy may abate the value of new eligible property for a total term of abatement not to exceed ten (10) years.

If a modernization project includes facility replacement, the abated value shall be the value of the new property less the replaced property.

**(g) Taxability:** From the execution of the abatement to the end of the agreement, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Section 4 (d) shall be fully taxable;



- (2) The base year value of existing eligible property as determined each year shall be fully taxable; and,
- (3) The additional value of new eligible property shall be fully taxable at the end of any abatement period.

## **SECTION 5: APPLICATION**

**(a)** Any present or potential owner of taxable property in the City of Sealy may request tax abatement by filing a written application with the City Manager or his/her designated person. An application for tax abatement must be filed prior to the commencement of any construction, alteration, or installation of any improvements related to a proposed new facility, expansion, or modernization.

**(b)** The application shall consist of a completed application form accompanied by: a general description of the project to be undertaken; a descriptive list of the improvements for which an abatement is requested; a list of the kind, number and location of all proposed improvements of the property; a list of the estimated value of inventory and the location where the inventory will be stored; the projected number of new and/or retained employees at the proposed facility and the estimated average salaries or wages; the estimated annual sales subject to State Sales & Use Tax; a map showing the location of the proposed site/project, a property description; and a time schedule for undertaking and completing the proposed improvements. The applicant shall also include information pertaining to the reasons the abatement is necessary in order to have the project undertaken in the City of Sealy. In the case of a modernization, a statement of the assessed value of the facility separately stated for real and personal property, shall be given for the tax year immediately preceding the application. The application form may require such financial and other information as the Sealy City Council deems appropriate for evaluating the financial capacity and other factors of the applicant.

**(c)** The applicant must certify that the applicant does not employ nor will it employ any undocumented workers (an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or, authorized under law to be employed in that manner in the United States). The applicant must agree that if it is convicted of a violation under 8 U.S.C. Section 1324a(f) after receiving a tax abatement, applicant shall repay the amount of the tax abatement received with interest, at the rate of 12% per annum, within 120 days after the City notifies the applicant of the violation. The City shall have the authority to bring a civil action to recover any amounts which the applicant must repay to the City under this provision, and in such action may recover court costs and reasonable attorney's fees.

**(d)** The City of Sealy may request additional information as deemed appropriate for evaluating the financial capacity of the applicant and compatibility of the proposed improvements with these guidelines and criteria.

**(e)** After receipt of a completed application, the City Manager and his/her designated person shall review the application to determine if it qualifies for abatement under the terms of these guidelines and criteria.

**(f)** The City council shall not establish a reinvestment zone or enter into a tax abatement agreement if it finds that the request for abatement was filed after the commencement of construction, alteration, or installation of improvements related to a proposed new facility,

expansion, or modernization or if the applicant deliberately provided false or misleading information that is material to the application.

## **SECTION 6: PUBLIC HEARING AND APPROVAL**

(a) The governing body may not adopt an ordinance designating an area as a reinvestment zone until the governing body has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after the expiration of an agreement entered into under Section 312.204 or 312.211, as applicable. At the hearing interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be:

- (1) published in a newspaper having general circulation in the municipality; and
- (2) delivered in writing to the presiding officer of the governing body of each taxing unit that includes in its boundaries real property that is to be included in the proposed reinvestment zone.

(b) In order to enter into a tax abatement agreement, the City Council must find that the terms of the proposed agreement meet these GUIDELINES AND CRITERIA and that:

- (1) There will be no substantial adverse effect on the provision of the City of Sealy's services or tax base; and
- (2) The planned use of the property will not constitute a hazard to public safety, health or morals.

## **SECTION 7: AGREEMENT**

(a) After approval of a tax abatement application within a designated reinvestment zone and a public hearing, the Sealy City Council shall formally pass a resolution and execute an agreement with the owner of the facility and/or lessee as required, which shall include:

- (1) Estimated value to be abated and the base year value;
- (2) Percent of value to be abated each year;
- (3) The commencement date and the termination date of abatement;
- (4) The proposed use of the facility, nature of construction, time schedule for completion of the project, site location map and property description;
- (5) The contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment, or other provisions that may be required for uniformity or compliance with state law;
- (6) Amount of investment, increase in assessed value or other capital investment and the number of jobs or payroll required to be retained or created;

- (7) A requirement that the applicant submit to the City on or before March 1st of each year of the abatement a report showing the employee count for the abated facility which corresponds to employment counts reported in the facility's Employer's Quarterly Report to the Texas Workforce Commission, and a separate letter certifying that the number of jobs created or retained as a direct result of the abated improvements within the City of Sealy. The annual report shall be used to determine abatement eligibility for that year and shall be subject to audit, if requested by the City of Sealy. Failure to submit may result in the applicant's ineligibility to receive an abatement for that year, termination of the tax abatement agreement and the recapture of abated taxes pursuant to Section 8 hereof.

(b) The City Council may impose any other conditions in a tax abatement agreement that the City Council deems necessary to promote the purposes of these guidelines.

### **SECTION 8: RECAPTURE**

(a) In the event that the facility is completed and begins producing product or providing service, but subsequently discontinues producing product or service for any reason except fire, explosion or other casualty or accident or natural disaster for a period of one (1) year during the abatement period, then the agreement shall terminate and so shall the abatement of the taxes for the calendar year during which the facility no longer produces. The taxes otherwise to be abated for that calendar year shall be paid to the City of Sealy within sixty (60) days from the date of notification of termination by the City of Sealy.

(b) Should the City Council determine that the company or individual applicant is in default according to the terms and conditions of its agreement, the City of Sealy shall notify the company or individual in writing at the address stated in the agreement, and if such is not cured within sixty (60) days from the date of such notice (the Cure Period), then the agreement may be terminated.

(c) In the event that the company or individual allows its ad valorem taxes owed the City of Sealy to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or violates any of the terms and conditions of the abatement agreement and fails to cure during the Cure Period, then the City may terminate the agreement and all taxes previously abated by virtue of the agreement will be recaptured and paid within sixty (60) days of the termination and Cure Period.

### **SECTION 9: ADMINISTRATION**

(a) Each year, the company or individual receiving abatement shall furnish the City with such information as may be necessary for the abatement.

(b) The agreement shall stipulate that employees and/or designated representatives of the City of Sealy will have access to the reinvestment zone during the term of the abatement to inspect the facility to determine if the terms and conditions of the agreement are being met. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or

operation of the facility. All inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

(c) Upon completion of construction, the city manager or his/her designated person shall annually evaluate each facility receiving abatement to ensure compliance with the agreement and report possible violations of the agreement to the City of Sealy and its attorney.

(d) All documents related to tax abatements, including the annual certifications, will be kept on file with the City Secretary.

#### **SECTION 10: ASSIGNMENT**

An abatement may be assigned by the holder to a new owner or lessee of the same facility and/or abated property with the written consent of the Sealy City Council, which consent shall not be unreasonably withheld. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the agreement. Any assignment of a tax abatement agreement shall be to an entity that contemplates the same improvements or repairs to the property, except to the extent such improvements or repairs have been completed. No assignment shall be approved if the assignor or the assignee is indebted to the City of Sealy for ad valorem taxes or other obligations.

#### **SECTION 11: CONFIDENTIALITY OF PROPRIETARY INFORMATION**

Subject to the provisions and limitations of Chapter 552 of the Texas Government Code, information that is provided to the City of Sealy in connection with an application or request for the creation of a reinvestment zone for the purpose of tax abatement in accordance with the above criteria and guidelines and which describes the specific process or business activities to be conducted or equipment or other property to be located on the property for which the tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. The information in the custody of the City of Sealy after the agreement is executed will be treated as confidential to the extent allowed by law.

#### **SECTION 12: SUNSET PROVISION**

These GUIDELINES AND CRITERIA are effective upon the date of their adoption and will remain in force for two (2) years, at which time all reinvestment zones and tax abatement agreements created pursuant to its provisions will be reviewed by the Sealy City Council to determine whether the goals have been achieved. Based on that review, the GUIDELINES AND CRITERIA will be modified, renewed or eliminated providing that such actions shall not affect existing agreements.